

## Internal Revenue Service, Treasury

## § 1.381(c)(2)-1

Year	Taxable income	Computation
Preacquisition part year ..	\$18,100	$\$36,500 \times 181/365$
Partial No. 1 .....	9,200	$36,500 \times 92/365$
Partial No. 2 .....	9,200	$36,500 \times 92/365$

(iii) *Z Corporation's 1954 loss.* The carryover to 1959 is \$0, computed as follows:

Net operating loss .....	\$30,000
Less:	
Z's 1955, 1956, 1957, and 9/30/58-3 year income .....	4,000
Net operating loss carryover to Partial No. 2 year .....	26,000
Less:	
Partial No. 2 year taxable income .....	9,200
	16,800

The balance of \$16,800 is not carried over to 1959 since X Corporation's taxable year 1958 is the last of the five years to which Z's 1954 loss may be carried under section 172(b)(1).

(iv) *Y Corporation's 1957 loss.* The carryover to 1959 is \$14,800, computed as follows:

Net operating loss .....	\$25,000
Less:	
Y's 6/30/58-year income .....	1,000
Net operating loss carryover to Partial No. 1 year .....	24,000
Less:	
Partial No. 1 year taxable income .....	9,200
Carryover to Partial No. 2 year .....	14,800
Less:	
X's Partial No. 2 year taxable income .....	\$9,200
Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of \$26,000 to such partial year) ..	26,000
	0
Carryover to 1959 .....	14,800

(v) *X Corporation's 1957 loss.* The carryover to 1959 is \$1,900, computed as follows:

Net operating loss .....	\$20,000
Less:	
X's preacquisition part year taxable income ..	18,100
Carryover to Partial No. 1 year .....	1,900
Less:	
Partial No. 1 year taxable income .....	\$9,200
Minus X's net operating loss deduction for Partial No. 1 year (i.e., Y's 1957 carryover of \$24,000 to such partial year) ..	24,000
	0
Carryover to Partial No. 2 year .....	1,900
Less:	
Partial No. 2 year taxable income .....	\$9,200

Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of \$26,000, and Y's 1957 carryover of \$14,800, to such partial year .....	40,800
	0
Carryover to 1959 .....	\$1,900

(vi) *Summary of carryovers to 1959.* The aggregate of the net operating loss carryovers to 1959 is \$16,700, computed as follows:

Z's 1954 loss .....	xxx
Y's 1957 loss .....	\$14,800
X's 1957 loss .....	91,900
Total .....	16,700

## § 1.381(c)(2)-1 Earnings and profits.

(a) *In general.* (1) Section 381(c)(2) requires the acquiring corporation in a transaction to which section 381(a) applies to succeed to, and take into account, the earnings and profits, or deficit in earnings and profits, of the distributor or transferor corporation as of the close of the date of distribution or transfer. In determining the amount of such earnings and profits, or deficit, to be carried over, and the manner in which they are to be used by the acquiring corporation after such date, the provisions of section 381(c)(2) and this section shall apply. For purposes of section 381(c)(2) and this section, if the distributor or transferor corporation accumulates earnings and profits, or incurs a deficit in earnings and profits, after the date of distribution or transfer and before the completion of the reorganization or liquidation, such earnings and profits, or deficit, shall be deemed to have been accumulated or incurred as of the close of the date of distribution or transfer.

(2) If the distributor or transferor corporation has accumulated earnings and profits as of the close of the date of distribution or transfer, such earnings and profits shall (except as hereinafter provided in this section) be deemed to be received by, and to become a part of the accumulated earnings and profits of, the acquiring corporation as of such time. Similarly, if the distributor or transferor corporation has a deficit in accumulated earnings and profits as of the close of the date of distribution or transfer, such deficit shall (except as hereinafter provided in this section) be deemed to be incurred by the acquiring

corporation as of such time. In no event, however, shall the accumulated earnings and profits, or deficit, of the distribution or transferor corporation be taken into account in determining earnings and profits of the acquiring corporation for the taxable year during which occurs the date of distribution or transfer.

(3) Any part of the accumulated earnings and profits, or deficit in accumulated earnings and profits, of the distributor or transferor corporation which consists of earnings and profits, or deficits, accumulated before March 1, 1913, shall be deemed to become earnings and profits, or deficits, of the acquiring corporation accumulated before March 1, 1913, and any part of the accumulated earnings and profits of the distributor or transferor corporation which consists of increase in value of property accrued before March 1, 1913, shall be deemed to become earnings and profits of the acquiring corporation consisting of increase in value of property accrued before March 1, 1913.

(4) If the acquiring corporation and each distributor or transferor corporation has accumulated earnings and profits as of the close of the date of distribution or transfer, or if each of such corporations has a deficit in accumulated earnings and profits as of such time, then the accumulated earnings and profits (or deficit) of each such corporation shall be consolidated as of the close of the date of distribution or transfer in the accumulated earnings and profits account of the acquiring corporation. See subparagraph (6) of this paragraph for determination of the accumulated earnings and profits (or deficit) of the acquiring corporation as of the close of the date of distribution or transfer.

(5) If (i) one or more corporations a party to a distribution or transfer has accumulated earnings and profits as of the close of the date of distribution or transfer, and (ii) one or more of such corporations has a deficit in accumulated earnings and profits as of such time, the total of any such deficits shall be used only to offset earnings and profits accumulated, or deemed to have been accumulated under subparagraph (6) of this paragraph, by the ac-

quiring corporation after the date of distribution or transfer. In such instance, the acquiring corporation will be considered as maintaining two separate earnings and profits accounts after the date of distribution or transfer. The first such account shall contain the total of the accumulated earnings and profits as of the close of the date of distribution or transfer of each corporation which has accumulated earnings and profits as of such time, and the second such account shall contain the total of the deficits in accumulated earnings and profits of each corporation which has a deficit as of such time. The total deficit in the second account may not be used to reduce the accumulated earnings and profits in the first account (although such earnings and profits may be offset by deficits incurred, or deemed to have been incurred, after the date of distribution or transfer) but shall be used only to offset earnings and profits accumulated, or deemed to have been accumulated under subparagraph (6) of this paragraph, by the acquiring corporation after the date of distribution or transfer.

(6) In any case in which it is necessary to compute the accumulated earnings and profits, or the deficit in accumulated earnings and profits, of the acquiring corporation as of the close of the date of distribution or transfer and such date is a day other than the last day of a taxable year of the acquiring corporation—

(i) If the acquiring corporation has earnings and profits for its taxable year during which occurs the date of distribution or transfer, such earnings and profits (a) shall be deemed to have accumulated as of the close of such date in an amount which bears the same ratio to the undistributed earnings and profits of such corporation for such year as the number of days in the taxable year preceding the date following the date of distribution or transfer bears to the total number of days in the taxable year, and (b) shall be deemed to have accumulated after the date of distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of such corporation for such year as the number of days in the taxable year

## Internal Revenue Service, Treasury

## § 1.381(c)(2)-1

following such date bears to the total number of days in such taxable year. For purposes of the preceding sentence, the undistributed earnings and profits of the acquiring corporation for such taxable year shall be the earnings and profits for such taxable year reduced by any distributions made therefrom during such taxable year.

(ii) If the acquiring corporation has an operating deficit for its taxable year during which occurs the date of distribution or transfer, then, unless the actual accumulated earnings and profits, or deficit, as of such date can be shown, such operating deficit shall be deemed to have accumulated in a manner similar to that described in subdivision (i) of this subparagraph.

(7) This paragraph may be illustrated by the following examples, in which it is assumed that none of the accumulated earnings and profits, or deficits, consist of earnings and profits or deficits accumulated, or increase in value of property accrued, before March 1, 1913.

*Example (1).* (i) M and N Corporations make their returns on the basis of the calendar year. On June 30, 1959, M Corporation transfers all its assets to N Corporation in a statutory merger to which section 361 applies. The books of the two corporations reveal the following information:

Description	M Corporation (transferor)	N Corporation (acquirer)
Accumulated earnings and profits at close of calendar year 1958 ..	\$100,000	\$150,000
Earnings and profits of taxable year ending June 30, 1959 .....	15,000	.....
Earnings and profits of calendar year 1959 .....	.....	36,500
Distributions during calendar year 1959 .....	0	0

(ii) As of the close of June 30, 1959, N acquires from M accumulated earnings and profits of \$115,000. Since M and N each has accumulated earnings and profits as of the close of the date of transfer, M's accumulated earnings and profits are added to N's accumulated earnings and profits as of such time. However, no part of M's accumulated earnings and profits is taken into account in determining N's earnings and profits for the calendar year 1959. Therefore, N's earnings and profits for the calendar year 1959 are \$36,500.

*Example (2).* (i) X and Y Corporations make their returns on the basis of the calendar year. On June 30, 1959, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies.

The books of the two corporations reveal the following information:

Description	X Corporation (transferor)	Y Corporation (acquirer)
Accumulated earnings and profits at close of calendar year 1958 ..	\$20,000	\$100,000
Deficit in earnings and profits for taxable year ending June 30, 1959 .....	80,000	.....
Earnings and profits of calendar year 1959 .....	.....	36,500
Distributions during calendar year 1959 .....	0	0

(ii) As of the close of June 30, 1959, Y acquires from X a deficit in accumulated earnings and profits in the amount of \$60,000. This deficit may be used only to reduce those earnings and profits of Y which are accumulated, or deemed to have accumulated, after June 30, 1959. Accordingly, as of December 31, 1959, the accumulated earnings and profits of Y amount to \$118,100; at such time Y also has a separate deficit in accumulated earnings and profits in the amount of \$41,600. These amounts are determined as follows:

Accumulated earnings and profits of Y as of the close of 1958 .....	\$100,000
Add:	
Portion of undistributed earnings and profits of Y for 1959 deemed to have accumulated as of close of June 30, 1959 (\$36,500×181/365) .....	18,100
Accumulated earnings and profits of Y as of close of June 30, 1959, and also as of Dec. 31, 1959 .....	118,100
Portion of undistributed earnings and profits of Y for 1959 deemed to have accumulated after June 30, 1959 (\$36,500×184/365) .....	18,400
Less:	
Deficit in accumulated earnings and profits acquired by Y from X Corporation as of close of June 30, 1959 .....	60,000
Separate deficit in accumulated earnings and profits of Y as of Dec. 31, 1959 .....	41,600

*Example (3).* Assume the same facts as in *Example (2)*, except that on September 15, 1959, Y Corporation makes a cash distribution of \$96,500. The entire distribution is a dividend: \$36,500 from earnings and profits for the taxable year 1959 and \$60,000 from earnings and profits accumulated as of December 31, 1958. Accordingly, as of December 31, 1959, Y has accumulated earnings and profits of \$40,000, and also has a separate deficit in accumulated earnings and profits of \$60,000. These amounts are determined as follows:

Earnings and profits of Y for calendar year 1959	\$36,500
Accumulated earnings and profits of Y as of close of 1958 .....	100,000
Total .....	136,500

§ 1.381(c)(2)-1

26 CFR Ch. I (4-1-01 Edition)

Less:	
Distributions during 1959 .....	96,500
Accumulated earnings and profits of Y as of Dec. 31, 1959 .....	40,000
Deficit in accumulated earnings and profits acquired from X as of close of June 30, 1959 .....	\$60,000
Less:	
Portion of Y's undistributed earnings and profits for 1959 deemed to have accumulated after June 30, 1959 .....	0
Separate deficit in accumulated earnings and profits of Y as of Dec. 31, 1959 ...	60,000

*Example (4).* (i) M and N Corporations make their returns on the basis of the calendar year. On June 30, 1959, M Corporation transfers all its assets to N Corporation in a statutory merger to which section 361 applies. The books of the two corporations reveal the following information:

Description	M Corporation (transferor)	N Corporation (acquirer)
Accumulated earnings and profits at close of calendar year 1958 ..	\$100,000	\$50,000
Earnings and profits for taxable year ending June 30, 1959 .....	10,000	.....
Deficit in earnings and profits for calendar year 1959 .....	.....	146,000
Distributions during calendar year 1959 .....	0	0

(ii) Assuming that N has not shown its actual accumulated earnings and profits, or deficit, as of the close of June 30, 1959, N has a deficit in accumulated earnings and profits at such time which amounts to \$22,400, determined as follows:

Accumulated earnings and profits of N as of close of 1958 .....	\$50,000
Less:	
Portion of deficit in earnings and profits of N for 1959 deemed to have accumulated as of close of June 30, 1959 (\$146,000×181/365) .....	72,400
Deficit in accumulated earnings and profits of N as of close of June 30, 1959, and also as of Dec. 31, 1959 ....	22,400

As of the close of June 30, 1959, N acquires from M accumulated earnings and profits in the amount of \$110,000, no part of which may

be offset by N's own deficit of \$22,400; however, such earnings and profits may be offset by deficits incurred, or deemed incurred, by N after June 30, 1959. Thus, as of December 31, 1959, N has the above-mentioned deficit of \$22,400; at such time N also has accumulated earnings and profits in the amount of \$36,400, determined as follows:

Accumulated earnings and profits acquired from M as of close of June 30, 1959 .....	\$110,000
Less:	
Portion of deficit in earnings and profits of N for 1959 deemed to have accumulated after June 30, 1959 (\$146,000×184/365) .....	73,600
Accumulated earnings and profits of N as of Dec. 31, 1959 .....	36,400

*Example (5).* Assume the same facts as in *Example (4)*, except that on September 9, 1959, N Corporation makes a cash distribution of \$100,000. The amount of \$82,000 is a dividend from accumulated earnings and profits, computed as follows:

Accumulated earnings and profits acquired from M as of close of June 30, 1959 .....	\$110,000
Less:	
Deficit in earnings and profits of N for 1959 deemed to have accumulated from June 30 through Sept. 8, 1959 (\$146,000×70/365) .....	28,000
Accumulated earnings and profits as of close of Sept. 8, 1959 .....	82,000

As of December 31, 1959, N Corporation has a deficit in accumulated earnings and profits of \$68,000, computed as follows:

Deficit in accumulated earnings and profits of N as of close of June 30, 1959 .....	\$22,400
Add:	
Portion of N's deficit in earnings and profits for 1959 deemed to have accumulated after Sept. 8, 1959 (\$146,000×114/365) ....	45,600
Deficit in accumulated earnings and profits of N as of Dec. 31, 1959 .....	68,000

*Example (6).* (i) X, Y, and Z Corporations make their returns on the basis of the calendar year. On June 30, 1959, X Corporation and Y Corporation transfer all their assets to Z Corporation in a statutory merger to which section 361 applies. The books of the three corporations reveal the following information:

Description	X Corporation (transferor)	Y Corporation (transferor)	Z Corporation (acquirer)
Accumulated earnings and profits (or deficit) at close of calendar year 1958 .....	\$35,000	(\$25,000)	(\$20,000)
Earnings and profits (or deficit) for taxable year ended June 30, 1959 .....	5,000	(5,000)	.....
Earnings and profits for calendar year 1959 .....	.....	.....	36,500
Distributions during 1959 .....	0	0	0

(ii) As of the close of June 30, 1959, Z acquires from Y a deficit in accumulated earnings and profits of \$30,000. As of such time,

Z's own deficit in accumulated earnings and profits amounts to \$1,900, determined as follows:

## Internal Revenue Service, Treasury

## § 1.381(c)(2)-1

Deficit in accumulated earnings and profits of Z as of close of 1958 .....	\$20,000
Less:	
Portion of undistributed earnings and profits of Z for 1959 deemed to have accumulated as of close of June 30, 1959 (\$36,500×181/365) .....	18,100
Deficit in accumulated earnings and profits as of close of June 30, 1959 ..	1,900

The total deficit of \$31,900 may be used only to offset earnings and profits of Z accumulated, or deemed to have accumulated, after June 30, 1959; such deficit may not be used to reduce the accumulated earnings and profits of \$40,000 acquired from X as of the close of June 30, 1959. Thus, as of December 31, 1959, the accumulated earnings and profits of Z amount to \$40,000; at such time Z Corporation also has a separate deficit in accumulated earnings and profits in the amount of \$13,500, determined as follows:

Deficit in accumulated earnings and profits as of close of June 30, 1959 .....	\$31,900
Less:	
Portion of undistributed earnings and profits of Z for 1959 deemed to have accumulated after June 30, 1959 (\$36,500×184/365) .....	18,400
Separate deficit in accumulated earnings and profits as of Dec. 31, 1959 .....	13,500

*Example (7).* X and Y Corporations make their returns on the basis of the calendar year. On December 31, 1954, X transfers all its assets to Y in a statutory merger to which section 361 applies. The books of the two corporations reveal the following information:

Description	X Corporation (transferor)	Y Corporation (acquirer)
Accumulated earnings and profits (or deficit) at close of calendar year 1954 .....	(\$50,000)	\$210,000
Earnings and profits (or deficit) for calendar year:		
1955 .....		5,000
1956 .....		(20,000)
1957 .....		70,000
1958 .....		60,000
1959 .....		55,000
Cash distributions on:		
Sept. 1, 1957 .....		80,000
Sept. 1, 1958 .....		40,000
Sept. 1, 1959 .....		30,000

The balances in the accumulated earnings and profits account and the separate deficit account of Y Corporation at the close of the taxable year involved are as follows:

Year	Deficit acquired from X Corporation	Accumulated earnings and profits of Y Corporation
1954 .....	\$50,000	\$210,000

Year	Deficit acquired from X Corporation	Accumulated earnings and profits of Y Corporation
1955 .....	45,000	210,000
1956 .....	45,000	190,000
1957 .....	45,000	180,000
1958 .....	25,000	180,000
1959 .....	None	180,000

(b) *Successive acquisitions.* (1) If, as of the date of distribution or transfer, either the acquiring corporation, or the distributor or transferor corporation, or both, is considered under paragraph (a) of this section to be maintaining separate earnings and profits accounts as the result of a prior transaction or transactions to which section 381(a) applied, the accumulated earnings and profits, or deficit in accumulated earnings and profits, of each such corporation shall be combined with the appropriate earnings and profits account of the other such corporation. For example, if, as of the date of transfer, the acquiring corporation and the transferor corporation are each maintaining separate accounts, one containing accumulated earnings and profits and the other containing a deficit in accumulated earnings and profits, the amounts in the two accumulated earnings and profits accounts shall be combined into one account, and the amounts in the two deficit accounts shall be combined into a second account, and the amount in one combined account may not be used to offset the amount in the other combined account.

(2) This paragraph may be illustrated by the following examples, in which it is assumed that none of the accumulated earnings and profits, or deficits, consist of earnings and profits or deficits accumulated, or increase in value of property accrued, before March 1, 1913.

*Example (1).* (i) X, Y, and Z Corporations make their returns on the basis of the calendar year. On June 30, 1958, X Corporation transfers all its assets to Z Corporation in a statutory merger to which section 361 applies, and on August 31, 1958, Y Corporation transfers all its assets to Z Corporation in another statutory merger to which section 361 applies. The books of the three corporations reveal the following information:

Description	X Corpora- tion (trans- feror)	Y Corpora- tion (trans- feror)	Z Corpora- tion (trans- feror)
Accumulated earnings and profits (deficit) at close of calendar year 1957 .....	(\$40,000	\$10,000	\$60,000
Deficit in earnings and profits for taxable year ending June 30, 1958 .....	(5,000)	.....	.....
Earnings and profits for taxable year ending Aug. 31, 1958 .....	.....	2,000	.....
Earnings and profits of calendar year 1958 .....	.....	.....	36,500
Distributions during calendar year 1958 .....	0	0	0

(ii) As of the close of June 30, 1958, Z acquires from X a deficit in accumulated earnings and profits in the amount of \$45,000, which deficit may be used only to reduce those earnings and profits of Z which are accumulated, or deemed to have been accumulated, after June 30, 1958. As of the close of August 31, 1958, Z acquires from Y earnings and profits of \$12,000, no portion of which may be reduced by the deficit acquired by Z from X. Accordingly, as of December 31, 1958, Z has accumulated earnings and profits of \$90,100, and also has a separate deficit in accumulated earnings and profits of \$26,600. These amounts are determined as follows:

Accumulated earnings and profits of Z as of Dec. 31, 1957 .....	\$60,000
Add:	
Portion of undistributed earnings and profits of Z for 1958 deemed to have accumulated as of close of June 30, 1958 (\$36,500×181/365) .....	18,100
Accumulated earnings and profits of Z as of June 30, 1958 .....	78,100
Add:	
Accumulated earnings and profits acquired by Z from Y as of close of Aug. 31, 1958 .....	12,000
Accumulated earnings and profits of Z as of close of Aug. 31, 1958, and also as of Dec. 31, 1958 .....	90,100
Deficit in accumulated earnings and profits acquired by Z from X as of close of June 30, 1958 .....	45,000
Less:	
Portion of undistributed earnings and profits of Z for 1958 deemed to have accumulated from June 30 through Aug. 31, 1958 (\$36,500×62/365) .....	6,200
Separate deficit in accumulated earnings and profits of Z as of Aug. 31, 1958 .....	38,800
Less:	
Portion of undistributed earnings and profits of Z for 1958 deemed to have accumulated after Aug. 31, 1958 (\$36,500×122/365) .....	12,200
Separate deficit in accumulated earnings and profits of Z as of Dec. 31, 1958 .....	26,600

*Example (2).* (i) Assume the same facts as in *Example (1)*, plus the additional fact that on June 30, 1959, Z Corporation transfers all its assets to M Corporation (which makes its return on the basis of the calendar year) in a statutory merger to which section 361 ap-

plies, and that as of such time M Corporation is considered to be maintaining separate earnings and profits accounts as the result of a previous transaction to which section 381(a) applied. The books of the two corporations reveal the following information:

Description	Z Corpora- tion (trans- feror)	M Corpora- tion (trans- feror)
Accumulated earnings and profits as of Dec. 31, 1958 .....	\$90,100	\$50,000
Separate deficit in accumulated earnings and profits as of Dec. 31, 1958 .....	26,600	30,000
Earnings and profits for taxable year ending June 30, 1959 .....	5,000	.....
Earnings and profits of calendar year 1959 .....	.....	36,500
Distributions during 1959 .....	0	0

(ii) As of June 30, 1959, M acquires from Z accumulated earnings and profits of \$90,100, which amount is combined with M's own accumulated earnings and profits of \$50,000; M also acquires from Z a deficit in accumulated earnings and profits of \$21,600 (\$26,600 minus \$5,000), which amount is combined with M's own deficit of \$11,900. The total deficit of \$33,500 may be used only to reduce earnings and profits of M which are accumulated, or deemed to have accumulated, after June 30, 1959. Accordingly, as of December 31, 1959, M has accumulated earnings and profits of \$140,100, and also has a separate deficit in accumulated earnings and profits in the amount of \$15,100. These amounts are determined as follows:

Deficit of M as of Dec. 31, 1958 .....	\$30,000
Less:	
Portion of M's undistributed earnings and profits for 1959 deemed to have accumulated as of close of June 30, 1959 (\$36,500×181/365) .....	18,100
Deficit of M as of June 30, 1959 .....	11,900
Plus:	
Deficit of Z as of June 30, 1959 .....	21,600
Combined deficit of M as of close of June 30, 1959 .....	33,500
Less:	
Portion of M's undistributed earnings and profits for 1959 deemed to have accumulated after June 30, 1959 (\$36,500×184/365) .....	18,400
Separate deficit of M as of Dec. 31, 1959 .....	15,100

## Internal Revenue Service, Treasury

## § 1.381(c)(3)-1

Accumulated earnings and profits of M as of Dec. 31, 1958, and also as of June 30, 1959	50,000
Accumulated earnings and profits of Z as of Dec. 31, 1958, and also as of June 30, 1959	90,100
Combined accumulated earnings and profits of M as of close of June 30, 1959, and also as of Dec. 31, 1959 ..	140,100

(c) *Distribution of earnings and profits pursuant to reorganization or liquidation.*

(1) If, in a reorganization to which section 381(a)(2) applies, the transferor corporation pursuant to the plan of reorganization distributes to its stockholders property consisting not only of property permitted by section 354 to be received without recognition of gain, but also of other property or money, then the accumulated earnings and profits of the transferor corporation as of the close of the date of transfer shall be computed by taking into account the amount of earnings and profits properly applicable to the distribution, regardless of whether such distribution occurs before or after the close of the date of transfer.

(2) If, in a distribution to which section 381(a)(1) (relating to certain liquidations of subsidiaries) applies, the acquiring corporation receives less than 100 percent of the assets distributed by the distributor corporation, then the accumulated earnings and profits of the distributor corporation as of the close of the date of distribution shall be computed by taking into account the amount of earnings and profits properly applicable to the distributions to minority stockholders, regardless of whether such distributions occur before or after the close of the date of distribution.

(d) *Treatment of earnings and profits where assets are transferred to a corporation controlled by the acquiring corporation.* If, pursuant to the provisions of paragraph (b)(2) of § 1.381(a)-1, a corporation is considered to be the acquiring corporation even though a part of the acquired assets is transferred to one or more corporations controlled by the acquiring corporation, or all the acquired assets are transferred to two or more corporations controlled by the acquiring corporation, then whether any portion of the earnings and profits received by the acquiring corporation under section 381(c)(2) is allocable to such controlled corporation or corpora-

tions shall be determined without regard to section 381. See paragraph (a) of § 1.312-11.

[T.D. 6586, 26 FR 12550, Dec. 28, 1961, as amended by T.D. 6692, 28 FR 12817, Dec. 3, 1963]

## § 1.381(c)(3)-1 Capital loss carryovers.

(a) *Carryover requirement.* (1) Section 381(c)(3) requires the acquiring corporation in a transaction to which section 381(a) applies to succeed to, and take into account, the capital loss carryovers of the distributor or transferor corporation. To determine the amount of these carryovers as of the close of the date of distribution or transfer, and to integrate them with the capital loss carryovers of the acquiring corporation for purposes of determining the taxable income of the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of section 1212 in accordance with the conditions and limitations of section 381(c)(3) and this section.

(2) The capital loss carryovers of the acquiring corporation as of the close of the date of distribution or transfer shall be determined without reference to any capital gains or capital losses of the distributor or transferor corporation. The capital loss carryovers of a distributor or transferor corporation as of the close of the date of distribution or transfer shall be determined without reference to any capital gains or capital losses of the acquiring corporation.

(3) This section contains rules applicable to capital loss carryovers determined without reference to the amendment of section 1212(a) made by section 7 of the Act of September 2, 1964 (Public Law 88-571, 78 Stat. 860) in respect of foreign expropriation capital losses. If the distributor, transferor, or acquiring corporation sustains a net capital loss in a taxable year ending after December 31, 1958, any portion of which is attributable to a foreign expropriation capital loss, such portion shall be carried over to each of the ten succeeding taxable years consistently with the rules prescribed in this section and paragraph (a)(2) of § 1.1212-1.

(b) *First taxable year to which carryovers apply.* (1) The capital loss carryovers available to the distributor